



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cylink Corporation

File: B-233681

Date: November 30, 1988

DIGEST

General Accounting Office will not consider a protest of an award of a subcontract by a fixed-price contractor for an item arising out of an engineering change proposal requested by the contractor.

DECISION

Cylink Corporation protests the award of a subcontract by the Computer Sciences Corporation (CSC) to the Racal-Milgo Corporation for a Data Cryptor 64 under CSC's fixed-price contract No. TC-85-32 with the United States Customs Service, Department of the Treasury, to supply a consolidated data network for the Customs Service. Cylink claims that Racal-Milgo's proposed equipment does not comply with the solicitation's security requirements and that CSC considered information submitted by Racal-Milgo after the closing date for best and final offers.

We dismiss the protest.

This subcontract award arose out of an engineering change proposal submitted by CSC under its contract with Treasury to change the encryption equipment required to be supplied by CSC. Cylink states that it had been providing CSC with technical data regarding encryption technology on which the change proposal was based. Treasury accepted the change proposal, but as Cylink acknowledges, Treasury required CSC to obtain competition and Treasury's approval of the award, rather than simply subcontracting with Cylink.

Our Office will only review protests of the award of a subcontract when the subcontract is "by or for the government." 4 C.F.R. § 21.3(m)(10) (1988). Basically, a subcontract is considered to be "by or for the government" when the prime contractor principally provides large-scale management services to the government and, as a result,

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generally has an ongoing purchasing responsibility. In effect, the prime contractor essentially acts as a middleman or conduit between the government and the subcontractor. American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Electric Corp., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145; otherwise provides large-scale management services, Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ 44; serves as an agency's construction manager, C-E Air Preheater Co., Inc., B-194119, Sept. 14, 1979, 79-2 CPD ¶ 197; or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency. University of Michigan, et al., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. Except in these limited circumstances in which the prime contractor is basically acting as the government's agent, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered to be "by or for" the government. PL Aerospace Corp., B-231414, June 21, 1988, 88-1 CPD ¶ 594.

CSC is not providing large-scale management services as described above, but rather is performing a fixed-price contract to provide a data network, which includes encryption equipment. Contrary to Cylink's argument, there is no indication that CSC is a mere conduit to satisfy the government's requirements. Instead, as stated by Cylink, this "new" requirement was generated by CSC, not Treasury, and is but one item to be integrated in the consolidated data network furnished by CSC under a fixed-price contract. Since this new encryption equipment is being substituted for the equipment originally proposed by CSC, this work seems clearly within the scope of CSC's contract.

Further, even assuming, as Cylink argues, that the government approved the award, this is no indication that CSC is acting as the government's agent in the procurement. Rohde & Schwarz-Polarad, Inc.--Reconsideration, B-219108.2, July 8, 1985, 85-2 CPD ¶ 33.

Consequently, inasmuch as this subcontract award is not by or for the government, we will not consider the protest and it is accordingly dismissed.

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